

11-1200-274
State Auditor Number

DEPARTMENT OF EDUCATION
STATE OF SOUTH DAKOTA
CONSULTANT CONTRACT
FOR CONSULTANT SERVICES BETWEEN

(Learning.com) (Office of Assessment & Technology Systems)
(1620 SW Taylor Street, Suite 100) AND (800 Governors Drive)
(Portland, OR 97205) (Pierre, SD 57501-2294)
(Hereinafter referred to as Consultant) (Hereinafter referred to as State)

The State hereby enters into an Agreement for Consultant Services with the Consultant.

I. THE CONSULTANT:

- A. The Consultant services on this agreement commence September 1, 2010 and shall end September 30, 2012.
- B. The Consultant has affirmed that he/she is not a full-time state employee as per SDCL 3-12-47.
- C. The Consultant will not use state equipment, supplies, and facilities.
- D. The Consultant agrees to:
 1. Provide two single year administration licenses to administer 20,000 – 21st Century TechLiteracy Assessments during the 2010-2011 and 2011-2012 school years.
 2. Align assessment to South Dakota's Ed Tech Standards.
 3. Deliver assessment online via a secure site.
 4. Provide a dedicated account manager as well as phone and email support.
 5. Consult and communicate with the South Dakota Department of Education during all phases of the administration.
 6. Troubleshoot any options regarding tests that can not be delivered online as determined necessary by program staff and account manager.
 7. Provide Coordinators kits and training for each district via the web.
 8. Provide online tutorials, resources, trouble shooting guides.
 9. Provide online webinars designed to help district coordinators and proctors.
 10. Provide monthly online news and advice.
 11. Relay customer feedback to department staff.
 12. Provide email and phone support for districts.

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13. Provide product updates and enhancements of the product.
 14. Score, aggregate and deliver detailed reports based on the SD Standards to both the state and district entities as determined necessary by program staff.]
 15. Set expectations with districts regarding 21st Century Skills Assessment and its implementation and timelines agreed upon by South Dakota DOE and Learning.com for both pre and post assessments.
 16. Manage South Dakota districts' creation of coordinator, teacher and student accounts as needed for event scheduling, administration, secure access, and reporting for both pre and post assessment.
 17. Assist with the Learning.com District Upload process.
 18. Assist with tracking and reporting districts' progress during the assessment campaign and work with South Dakota DOE to promote district participation for both pre and post assessments.
 19. Coordinate all WebEx Professional Development sessions.
 20. Provide WebEx follow-up and other remote support for South Dakota DOE and South Dakota school districts as necessary.
 21. Serve as point of contact for field requests for information, feed input back to South Dakota DOE and Learning.com management.
 22. Serve as an advocate for districts in driving assessment data analysis.
 23. Compile a list of best practices for assessment implementations to be shared between South Dakota DOE and Learning.com.
 24. Create and maintain custom Professional and Customer Service and Support website to promote consistent, streamline communication between South Dakota DOE, Learning.com, and participating school districts.
- E. Consultant agrees to hold harmless and indemnify the State of South Dakota, its officers, agents and employees, from and against any and all actions, suits, damages, liability or other proceedings which may arise as a result of performing services hereunder. This section does not require the Consultant to be responsible for or defend against claims or damages arising solely from acts or omissions of the State, its officers or employees.

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- F. The Consultant agrees to provide services in compliance with the Americans with Disabilities Act of 1990.

II. THE STATE:

- A. The State will make a total payment upon satisfactory completion of the services as indicated in section I.D. not to exceed \$73,500.00. Payment will be made in (2) two installments as follows:

The first installment will be made upon completion of the services in 2010 and receipt of an itemized invoice and completion of the years test cycle submitted by the Consultant and approved by the State.

The second and final installment will be upon completion of services in 2011 and receipt of an itemized invoice and completion of the years test cycle submitted by the Consultant and approved by the State.

- B. The State will not pay Consultant expenses as a separate item.

- C. The State does not agree to perform any special provisions.

III. SUPERCESSION PROVISION: All other prior discussions, communications and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, and except as specifically provided herein, this Agreement constitutes the entire agreement with respect to the subject matter hereof.

IV. AMENDMENT PROVISION: This contract contains the entire agreement between the parties, and is subject to and will be construed under the laws of the State of South Dakota, and may be amended only in writing signed by both parties.

V. TERMINATION PROVISION: This agreement can be terminated upon thirty (30) days written notice by either party and may be terminated for cause by the State at any time with or without notice.

VI. INSURANCE PROVISION: The Consultant agrees, at its sole cost and expense, to maintain the appropriate insurance required by the State during the period of this agreement.

VII. CONTROLLING LAW PROVISION: This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota. Any lawsuit pertaining to or affecting this Agreement shall be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

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- VIII. COMPLIANCE PROVISION: Consultant will comply with all federal, state and local laws, regulations, ordinances, guidelines, permits and requirements applicable to providing services pursuant to this Agreement, and will be solely responsible for obtaining current information on such requirements.
- IX. DEFAULT PROVISION: This agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. This agreement will be terminated by the State if the Legislature fails to appropriate funds or grant expenditure authority. Termination for this reason is not a default by the State nor does it give rise to a claim against the State.
- X. EQUAL EMPLOYMENT OPPORTUNITY CLAUSE: Consultant is required to comply with E.O. 11246, "Equal Employment Opportunity", as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR Part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."
- XI. NONDISCRIMINATION CLAUSE: Consultant agrees to comply with all Federal statutes relating to non-discrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681-1683 and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) Sections 523 and 527 of the Public Health Services Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply.
- XII. DEBARMENT, SUSPENSION INELIGIBILITY, AND VOLUNTARY EXCLUSION PROVISION: Consultant certifies, by signing this agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by a Federal department or agency; have not, within a three (3) year


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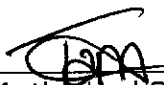
period preceding the awarding of this grant, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsifications, or destruction of records, making false statements, or receiving stolen property, or have not within a three (3) year period preceding this contract had one or more public transactions (federal, state, or local) terminated for cause or default.

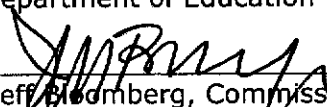
In witness hereto the parties signify their agreement by signature affixed below:

 9/14/10

Consultant Signature (Date)
Clark Holmes, VP Finance
 10-1-2010

Otto Doll, Commissioner (Date)
Bureau of Information & Telecommunications

 9/17/10

Authorized State Representative (Date)
Department of Education
 9/14

Jeff Bloomberg, Commissioner (Date)
Bureau of Administration

State Agency Coding: (Center/Company/Account)
State Agency contact who can provide additional
information regarding this contract:

1232530301S1/2000/52R40500Z
1232530274S0/2024/52040500Z
Peg Henson (605) 773-2489